**Office of the**
**Information Commissioner of Canada**

# 2007-2008 Estimates

## Departmental Performance Report

Robert Marleau
Information Commissioner of Canada

The Honourable Robert Douglas Nicholson,
PC. QC, M.P.
Minister of Justice

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## Section I: Overview

### 1.1 Message from the Information Commissioner of Canada

It is with great pleasure that I table before Parliament the Departmental Performance Report of the Office of the Information Commissioner of Canada (Office) for the fiscal year ending March 31, 2008.

My first full year in Office has been one of profound change, both in the world of access to information and in the workings of the Office, as well as one of considerable progress. I have sought to set the Office on a new course so it is better equipped to carry out its mandate of investigating complaints and to lay strong foundations to help us achieve our goal of excellence in serving Parliament and Canadians and advocating for openness in government.

On April 1, 2007 a number of new institutions became subject to the *Access to Information Act,* including the Office, as a result of the passage of the *Federal Accountability Act.* To meet our new obligations and challenges, we made major changes to the way the Office is structured, the processes we follow, and our complement of employees. We obtained additional funds to allow us to build this organizational capacity and develop our core functions. Among further improvements was the re-evaluation of the report cards process to establish a new approach that will produce a more balanced and comprehensive review of systemic issues.

In addition to delivering on our legal mandate the Office had four priorities as laid out in the 2007-2008 Report on Plans and Priorities:

- Reduce the backlog of investigations and ensure appropriate service standards are met, given increased demand resulting from the passage of the *Federal Accountability Act*;
- Reduce the number of complaints by engaging in departmental reviews (report cards), encouraging training of ATIP professionals, and raising awareness among federal institutions of their obligations under the *Access to Information Act*;
- Establish and administer a capacity to respond to requests under both the *Access to Information Act* and the *Privacy Act*, and comply with the administrative provisions of those statutes;
- Assist the government and Parliament in assessing proposals for reform of the *Access to Information Act*.

The Office achieved all but one of these priorities during the past year.

- Although we did not reduce the backlog of investigations, we established a new strategy and approach that will put us in a much stronger position to deliver on this priority in the coming year;

- Despite an increased number of complaints in 2007-2008, we have put continued efforts into improving the overall performance of federal institutions through a renewed report card process as well as contributing to an improved stewardship of the access to information program;

- We set up a secretariat and established new processes for handling access to information and privacy requests to meet our obligations under both Acts;

- We began work on legislative and administrative reforms towards modernizing the access to information regime and published a reference document to support these initiatives.

My principle goal is to ensure the access to information system functions in the best interests of Canadians. My first year was one of considerable progress in building our capacity to serve. I am confident that as we continue to develop the Office's core functions we will see positive results in achieving all our objectives.

Robert Marleau
Information Commissioner of Canada

## 1.2 Management Representation Statement

I submit for tabling in Parliament, the 2007–2008 Departmental Performance Report for the Office of the Information Commissioner of Canada.

This document has been prepared based on the reporting principles contained in the *Guide for the Preparation of Part III of the 2007–2008 Estimates: Reports on Plans and Priorities and Departmental Performance Reports*:

- It adheres to the specific reporting requirements outlined in the Treasury Board Secretariat guidance;
- It is based on the institution's Strategic Outcome and Program Activity Architecture;
- It presents consistent, comprehensive, balanced and reliable information;
- It provides a basis of accountability for the results achieved with the resources and authorities entrusted to it; and
- It reports finances based on approved numbers from the *Estimates* and the *Public Accounts of Canada*.

Suzanne Legault
Assistant Information Commissioner
Policy, Communications and Operations

## 1.3 Strategic Outcome and Program Activity Architecture (PAA)

The Office has a single strategic outcome and a single program activity as follows:

| | |
|---|---|
| **Strategic Outcome** | Individuals' rights under the *Access to Information Act* are safeguarded. |
| **Program Activity 1** | Compliance with access to information obligations |

## 1.4 Raison d'Être

The raison d'être of the Office is to ensure that the rights conferred by the *Access to Information Act* are respected; that complainants, heads of federal institutions and all third parties affected by complaints are given a reasonable opportunity to make representations to the Information Commissioner; to persuade federal institutions to adopt information practices consistent with the objectives of the *Access to Information Act*; and to bring appropriate issues of interpretation of the *Access to Information Act* before the Federal Court. The Office also advocates for greater access to information in Canada and promotes Canadians' right to access government information.

## 1.5 Financial and Human Resources

The following two tables present the total financial and human resources that the Office has managed in 2007-2008.

**Financial Resources ($000)**

| Planned Spending | Total Authorities | Actual Spending |
|---|---|---|
| $9,248 | $8,091 | $ 7,856 |

**Human Resources (FTEs*)**

| Planned | Actual | Difference |
|---|---|---|
| 90 | 60 | 30 |

* Full-Time Equivalent

The difference between the planned and actual human resources was caused by the delay in staffing positions due to a shortage of office space as well as planned resources that were not received. Funds related to the passage of the *Federal Accountability Act* and the establishment of the internal audit functions will be obtained during fiscal year 2008-2009.

## 1.6 Performance Status

The Office had four priorities for 2007-2008. The following table summarizes the actual performance of the Office against the priorities and includes a self-assessment of performance status. This table is a high-level presentation and more detailed information on actual performance is provided in Section II – Analysis by Program Activity.

| **Strategic Outcome: Individuals' rights under the *Access to Information Act* are safeguarded.** | | | |
|---|---|---|---|
| **Priorities for 2007-2008** | **Type** | **Actual performance** | **Performance Status** |
| 1. Reduce the backlog of investigations and ensure appropriate service standards are met, given increased demand resulting from the passage of the *Federal Accountability Act.* | Previous | We were unable to reduce the backlog of cases this year since we experienced an 81% increase in the number of complaints received. By year-end, 85% of our investigations were in backlog status according to our service standards. Nevertheless, we improved our average time to close the complaints going from 12.4 months last year to eight months this year, a 36% improvement rate. Moreover, we developed and started implementing an 11-point backlog strategy, including streamlining our complaints-handling process and planning a pilot project for a dedicated intake and early resolution unit. | Not met |
| 2. Reduce the number of complaints by engaging in departmental reviews, encouraging training of ATIP professionals, and raising awareness of federal institutions' responsibilities and obligations under the ATIA. | Previous | Although the Office experienced an increase in the number of complaints received primarily as a result of the coming into force of the *Federal Accountability Act*, we have continued to put efforts into improving overall performance of federal institutions against their obligations under the *Access to Information Act*. Ten report cards (departmental reviews) will be undertaken during the next fiscal year to evaluate the period of 2007-2008 based on a new and more balanced assessment. The Office and the Information Commissioner met with a large number of federal institutions, made presentations to Deputy Ministers to discuss the new "Duty to Assist" provision and made presentations before the ATIP community. We also began discussions with the Canadian School of Public Service and the Office of the Privacy Commissioner to develop a curriculum to train public servants in the field of access to information and privacy. We also continued to support the University of Alberta's Information Access and Protection of Privacy Certificate Program by acting as a member of the program's Advisory Committee and by enrolling staff in the program. | Partially met[1] |

[1] The Office added a rating "partially met" to the Treasury Board Secretariat's scale that was restricted to the following ratings: successfully met, not met, or exceeded expectations. A commitment that is partially met indicates that some elements were achieved as planned and other elements were either not achieved or delayed.

| Strategic Outcome: Individuals' rights under the *Access to Information Act* are safeguarded. | | | |
|---|---|---|---|
| **Priorities for 2007-2008** | **Type** | **Actual performance** | **Performance Status** |
| 3. Establish and administer a capacity to respond to requests under both the *Access to Information Act* and the *Privacy Act*, and to comply with the administrative provisions of those statutes. | New | As of April 1, 2007, the OIC became subject to the *Access to Information Act* and the *Privacy Act*. We have set up an access to information and privacy secretariat to administer both Acts. The secretariat worked on a policy and procedures manual for the administration of access requests. It gave awareness training to employees on their responsibilities and requirements under both Acts. Further, to address the integrity of the complaints process, the Office established adequate safeguards to prevent possible conflict of interest if the Office were to investigate itself. The Commissioner appointed an ad hoc Information Commissioner to handle these complaints independently from the Office. | Successfully met |
| 4. Assist the government and Parliament in assessing proposals for reform of the *Access to Information Act* | Previous | During 2007–2008, we began work with the Department of Justice and the Treasury Board Secretariat on legislative and administrative initiatives about access to information. As part of the work on the legislative reform, we prepared a reference document that lists the proposals contained in the *Open Government Act*, draft bill with their sources. A copy of the document is available on our website. (www.infocom.gc.ca/publications/pdf_en/OGA_notes.pdf). | Successfully met |

## 1.7 Factors Affecting Performance in 2007-2008

In 2007-2008, the following external and internal factors influenced how the Office delivered on its ombudsman's functions as well as the relative priority of the activities carried out during the year.

**External Factors**

***Federal Accountability Act***

The impact of the *Federal Accountability Act* and the resulting amendments to the *Access to Information Act* and the *Privacy Act* has been substantial. During 2007–2008, about 70 institutions, including Crown corporations and their wholly owned subsidiaries, and various foundations and agencies became subject to the ATIA. This represents a 37 percent increase in the number of institutions covered by the Act, and brings the total to more than 250. Among that group of organizations was the Office of the Information Commissioner, which required us to set up an effective access to information and privacy program and to appoint an ad hoc Information Commissioner to respond to access to information complaints about us.

Another major implication of the increase in institutions subject to the Act is that we are managing a larger volume of complaints. As stated previously, the number of complaints increased in 2007-2008 by 81 percent over last year. The fact that the *Federal Accountability Act* reduced the time period in which requesters could complain to our Office from one year to 60 days also contributed to the number of complaints received during the year. Possible reasons for the increase in the number of complaints that are not specifically related to the *Federal Accountability Act* may be a renewed interest in the Act arising from the Gomery Commission, an increased number of consultations with other federal institutions and claims for longer extensions.

We provided assistance to the new institutions as they gained experience in administering the Act and the complaint process. We obtained additional funds from Treasury Board to allow us to meet the requirements of the *Federal Accountability Act*.

**Systemic challenges**

There are a number of challenges facing the entire access to information system that have direct impacts on the performance of the Office. One of the most significant challenges is a shortage of qualified workforce across the government, which was amplified by the passing of the *Federal Accountability Act*. Not only does this create a retention problem with our current staff of investigators, it contributes to the difficulty to hire qualified workforce across government. With shortages and less experienced staff in federal institutions, as well as institutions placing the priority on requests and consultations, our investigation of complaints involving them may be delayed, thus having an impact on our ability to conduct investigations in a timely way.

**Internal Factors**

**Backlog**

According to the Office's service standards, the backlog stood at 2,318 at the end of 2007-2008, a significant increase from the previous year. Although the Office closed more complaints this year by comparison to 2006-2007, at year-end, almost 85% of the cases were in backlog status. Despite considerable efforts to reduce this number, the Office received an unprecedented number of complaints which significantly contributed to the state of the backlog. The Office devised a backlog strategy to improve the effectiveness of the complaints-handling process and to ensure timely resolution.

**Institutional changes**

An important factor that contributed to the performance of the Office in 2007-2008 related to the limited capacity of the Office in terms of funding, staff levels, support tools as well as core administrative functions. We put considerable effort into building organizational capacity and developing our core functions in 2007-2008.

## Section II: Analysis by Program Activity

### 2.1 Performance in 2007-2008

**Program Activity 1: Compliance with access to information obligations**

**Program Activity Description**

The *Access to Information Act* is the legislative authority for the oversight activities of the Information Commissioner, which are:

- to investigate complaints from individuals and corporations;
- to review the performance of government institutions;
- to report the results of investigations/reviews and recommendations to complainants, government institutions, and Parliament;
- to pursue judicial enforcement; and
- to provide advice to Parliament on access to information matters.

**Financial Resources ($000)**

| Planned Spending | Total Authorities | Actual Spending |
|---|---|---|
| $9,248 | $8,091 | $7,856 |

**Human Resources (FTEs)**

| Planned | Actual | Difference |
|---|---|---|
| 90 | 60 | 30 |

**Performance in 2007-2008**

The 2007-2008 Report on Plans and Priorities, which is the basis for reporting in this Departmental Performance Report (DPR), included some early performance indicators. Reporting against those early indicators only provides a partial performance story about the Office (Refer to text box opposite).

**Performance Reporting Against Some Early Indicators**

Investigations:

- 1% of complaint investigations were completed within set service standards.
- 100% of well-founded complaints were resolved without recourse to the Courts.
- There were no cases where the Courts came to a conclusion different from the Commissioner after review under section 41 of the Act.
- One case (100%) was successfully challenged pursuant to section 18 of the *Federal Court Act*. Further, two Notices of Appeal were filed, one by the Attorney General and one by the Information Commissioner.

Reporting:

- Deadlines for statutory reports (i.e., Annual Report to Parliament) were met.
- All well-founded complaints were resolved without recourse to the courts.
- Reporting requirements in section 37 of the Act was met.

Advocacy before the Courts:

- Demonstrated consistency in selection criteria for seeking judicial review.
- All cases brought before the Courts were successful.

In response to the Treasury Board of Canada Secretariat Management, Resources and Results Structure Policy, the Office developed a more complete results and performance

measurement framework in the fall of 2007 (Refer to the latest Report on Plans and Priorities at http://www.tbs-sct.gc.ca/rpp/2008-2009/inst/ipc/ipc06-eng.asp). This framework defines results to be expected from the Office from the perspective of each of our key stakeholders (Parliamentarians, requesters, federal institutions, the Courts, and stakeholders in general including the public); the framework further associates performance indicators to each result. Reporting on the Office's performance against this new framework will allow for a more comprehensive performance story in the next DPR.

For the purpose of reporting in this year's DPR, the paragraphs that follow describe the work accomplished in 2007-2008 to deliver on the Program Activity through the main activities of the Office: investigations, departmental reviews (reports cards), reports, judicial review, and provision of advice and advocacy.

**Investigations**

**Complaints from individuals and corporations**

We received 2,387 new complaints in 2007-2008, which represents an increase of 1,070 or 81% from last year. Although we completed 9% more investigations this year (1,381 complaint files) than last year (1,268 complaint files), our inventory of active cases at year-end was 2,318 compared with 1,420 last year. As a result of having to manage this larger volume of complaints, 85% of our active cases were in backlog status as not having been completed within our service standards.

We usually complete investigations of administrative complaints in six months to one year, but many investigations of refusal and Cabinet confidence exclusion complaints take more than a year to investigate. Much of the delay is the result of the large backlog, which keeps complaints on hold for a significant period. Our average time to close the 1,381 complaints this year was eight months, a 36% improvement rate over last year's average of 12.4 months.

**Systemic complaints**

The Commissioner has in the past launched on his own initiative investigations to address what appear to be widespread problems, such as chronically late responses, improper management of extensions, large backlogs of unanswered requests and administrative practices that may result in requesters receiving slower or less forthcoming answers to access requests than they might otherwise. Individual requesters may also ask us to undertake a systemic investigation, by complaining about the same matter to several federal institutions.

In 2007-2008, we closed all 237 systemic complaints relating to delays that were carried over from the previous year. All these Commissioner-initiated complaints involved one institution that, in its early years of operation, had experienced continuing problems in responding to access requests on time. This year, the Commissioner started to address systemic issues, such as delays, through a more balanced and comprehensive report card process (Refer to paragraph below: Departmental Review – Report Cards).

**Backlog reduction plan**

The continuing and persistent backlog of investigations that we reported last year did not improve in 2007-2008 despite our considerable efforts to reduce the caseload. The situation was compounded by the 81% increase in the volume of complaints filed with our Office. To address the problem, we developed an 11-point backlog strategy and started implementing many of the actions. For example, to reduce bottlenecks in the management review and approval of cases, we restructured the Complaints Resolution and Compliance Branch by re-profiling the director general position to a second director position and creating a fourth chief position. With two directors in place, each one responsible for two chiefs and their teams of investigative staff, we pushed down delegations for the approval of all administrative cases and some refusal cases to the director level. Chiefs now sign off on abandoned or withdrawn complaints. Additional delegations are planned for the new fiscal year. We placed the priority on our oldest cases and closed 47% (184 of 391) of those that were over two years old. We also retained the services of a contractor to advance our oldest files. We started to monitor the older cases more closely. Although we encountered staff retention problems due to a shortage of qualified workforce, we have been able to staff three vacant positions.

We expended considerable effort examining ways to strengthen and streamline our complaints-handling process with a view to resolving complaints more efficiently and at the earliest opportunity, and making decisions faster and fairly. We reviewed our complaints-handling process and made some initial changes, such as closing complaints of delay/deemed refusal once the institution provided us with a commitment date which we would then monitor. In undertaking our review, we gathered ideas from our staff, administrators of the Act, our provincial counterparts and from a consulting firm with expertise in performance management and program evaluation. One key recommendation that we accepted and started planning for was the establishment of a dedicated intake and early resolution unit that prioritizes complaints according to a clear set of criteria. At year-end, we were in the planning stage to launch the unit early in the new fiscal year as a pilot project and developing the triage process and prioritization criteria. We are reviewing the other recommendations made, including establishing more effective performance targets. A copy of the consulting firm's report is available on our website (http://www.infocom.gc.ca/ publications/2008/pdf/final_report_Jan_29_08-e.pdf).

**Review the performance of federal institutions**

Before engaging in this year's Report Cards process, the Office took stock of how the process had gone in the past. As a result, many changes were made to the process for 2007-2008 namely to the review period, the selection of institutions, the scope of review/assessment and reporting.

The new approach to report cards will help produce a more complete picture of the performance of the selected institutions, addressing the timeliness of their responses to access to information requests as well as the completeness and accuracy of those responses. Through this new approach, the Office will also identify concerns that are prevalent throughout the system. On the timeliness front, the Office will not only focus on deemed refusals but will also look at issues causing delays such as consultations, approval process and use of extensions. As well, we will

analyse the investigative files related to complaints to assess the degree of completeness and accuracy.[2]

The result of the reviews will form part of a Special Report to Parliament to be tabled during the Fall 2008.

**Report the results of investigations, reviews and recommendations**

In addition to providing complainants and federal institutions with the results of investigations and recommendations, the Office tabled its 2007-2008 Annual Report in Parliament, which contains a detailed account of five investigations.

**Judicial enforcement**

Although most complaints are resolved at the end of the investigative process, the Commissioner participates in each case that raises a significant concern about the proper interpretation of the *Access to Information Act*, or an important legal principle relevant to its operation.

The Commissioner filed no new application for review in 2007-2008. However, six applications were filed by requesters seeking remedies against the Commissioner and one application was filed by a requester in which the Commissioner was improperly named as a respondent. Over the same period, the Supreme Court of Canada, the Federal Court of Appeal and the Federal Court issued sixteen decisions, five of which the Commissioner was either a party to or an intervener. These include decisions about matters such as challenging the Information Commissioner's powers to issue confidentiality orders during investigations[3], census records for aboriginal land claim research[4] , disclosure of portions of a discussion paper to Cabinet[5], personal information exemption raised by contractors[6] and the power of the Privacy Commissioner to examine and assess documents asserted to be protected under the solicitor-client privilege during an investigation[7].

**Provision of advice and advocacy**

Parliamentarians rely on the Commissioner for objective advice about the access to information implications of legislation, jurisprudence, regulations and policies. In 2007-2008, the Office created a unit to respond effectively and in a timely manner to Parliamentarians' enquiries and to keep legislators and decision-makers informed about the Office's views about access to information. The Office published materials on duty to assist as well as a reference guide on the

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[2] The Office selected the following ten (10) institutions: Canada Border Services Agency; Department of Foreign Affairs and International Trade; Department of Justice Canada; Department of National Defence; Health Canada; Library and Archives Canada; Natural Resources Canada; Privy Council Office; Public Works and Government Services Canada; and Royal Canadian Mounted Police.

[3] *Canada (Attorney General) v. Canada (Information Commissioner)* 2007 FC 1024 (T-531-06).

[4] *Canada (Minister of Industry) v. Canada (Information Commissioner)*, 2007 FCA 212 (A-107-06).

[5] *Canada (Minister of Environment) v. Canada (Information Commissioner)*, 2007 FCA 404 (A-502-06).

[6] *SNC Lavalin Inc. v. Canada (Minister for International Cooperation)*, 2007 FCA 397.

[7] *Privacy Commissioner of Canada v. Blood Tribe*, S-31755. The decision was issued on July 17, 2008.

*Open Government Act*. In addition, the Commissioner and Office representatives appeared a number of times before parliamentary committees.

The OIC provided its unique perspective and expertise to many inter-institutional policy projects in 2007-2008. The OIC is also working with partners to contribute to better stewardship of the access to information system and to promote openness in government. The Office has been actively involved with Treasury Board Secretariat in the renewal of access to information policies and also took part in many policy projects with other Officers of Parliament, provincial and territorial regulators, and federal institutions. One example is the pilot project led by Library and Archives Canada to develop documentation standards for investigative bodies.

As part of Right to Know Week in the fall of 2007, the OIC held a one-day seminar on various aspects of citizens' right to know, featuring presentations by experts in the field and from the Office on the fundamentals of access to information in Canada and how it can be improved. The Commissioner gave the keynote speech on his approach to fostering openness in government. The two assistant commissioners participated in similar events put on by some of our provincial counterparts.

In addition, the Commissioner and the Office staff made several presentations to a variety of audience on the rights, objectives and challenges associated with access to information.

**Link with priorities**

This section 2.1 described the Office's performance in 2007-2008 to deliver on its Program Activity 1. Of the four priorities that Office had set for this fiscal year, which were reported upon in Section 1.6 of this Report, the activities conducted under Program Activity 1 contributed directly to the achievement of the three following priorities (the two other priorities for 2007-2008 were linked more directly to internal management activities discussed in Section IV).

| Priorities | Type |
|---|---|
| Reduce the backlog of investigations and ensure appropriate service standards are met, given increased demand resulting from the passage of the *Federal Accountability Act*. | Previous |
| Reduce the number of complaints by engaging in departmental reviews, encouraging training of ATIP professionals, and raising awareness among of federal institutions' responsibilities and obligations under the ATIA. | Previous |
| Assist the government and Parliament in assessing proposals for reform of the *Access to Information Act* | Previous |

## Section III: Supplementary Information

### 3.1 Link to the Government of Canada Outcomes

The Information Commissioner of Canada is an Officer of Parliament who reports directly to the House of Commons and the Senate. The Strategic Outcome of, and the expected results from, the Office of the Information Commissioner are presented in the Office's 2008-2009 *Report on Plans and Priorities*.

### 3.2 Tables

**Table 1 – Comparison of Planned to Actual Spending (including FTEs)**

| ($000) | 2005-2006 Actual | 2006-2007 Actual | 2007-2008 | | | |
|---|---|---|---|---|---|---|
| | | | Main Estimates | Planned Spending | Total Authorities | Actual |
| Compliance with access to information obligations | 5,891 | 6,611 | 7,660 | 9,248 | 8,091 | 7,856 |
| **Total** | **5,891** | **6,611** | **7,660** | **9,248** | **8,091** | **7,856** |
| Less: Non-respendable revenue | N/A | N/A | N/A | N/A | N/A | N/A |
| Plus: Cost of services received without charge | 831 | 866 | N/A | 1,007 | N/A | 1,105 |
| **Total Spending** | **6,722** | **7,477** | **N/A** | **10,255** | **N/A** | **8,961** |
| **Full Time Equivalents** | 53 | 55 | N/A | 90 | N/A | 60 |

**Table 2 – Voted and Statutory Items**

| ($000) | | 2007-2008 | | | |
|---|---|---|---|---|---|
| Vote or Statutory Item | Truncated Vote or Statutory Wording | Main Estimates | Planned Spending | Total Authorities | Actual |
| 40 | Program expenditures | 6,684 | 8,113 | 7,247 | 7,012 |
| (S) | Contributions to employee benefit plans | 976 | 1,135 | 844 | 844 |
| | **Total Department or Agency** | **7,660** | **9,248** | **8,091** | **7,856** |

**Table 13: Response to Parliamentary Committees and External Audits**

For supplementary information on the department's response to Parliamentary Committees and External Audits, please visit: http://www.tbs-sct.gc.ca/dpr-rmr/2007-2008/index-eng.asp.

**Table 16 – Financial Statements**

## Office of the Information Commissioner of Canada

## Statement of Management Responsibility

Responsibility for the integrity and objectivity of the accompanying financial statements for the year ended March 31, 2008 and all information contained in these statements rests with the management of the Office of the Information Commissioner of Canada (the "Office"). These financial statements have been prepared by management in accordance with Treasury Board accounting policies which are consistent with Canadian generally accepted accounting principles for the public sector, and year-end instructions issued by the Office of the Comptroller General.

Management is responsible for the integrity and objectivity of the information in these financial statements. Some of the information in the financial statements is based on management's best estimates and judgement and gives due consideration to materiality. To fulfil its accounting and reporting responsibilities, management maintains a set of accounts that provides a centralized record of the Office's financial transactions. Financial information submitted to the *Public Accounts of Canada* and included in the Office's *Departmental Performance Report* is consistent with these financial statements.

Management maintains a system of financial management and internal control designed to provide reasonable assurance that financial information is reliable, that the Office's assets are safeguarded and that transactions are in accordance with the *Financial Administration Act,* are executed in accordance with prescribed regulations, within Parliamentary authorities, and are properly recorded to maintain accountability of Government funds. Management also seeks to ensure the objectivity and integrity of data in its financial statements by careful selection, training and development of qualified staff, by organizational arrangements that provide appropriate divisions of responsibility, and by communication programs aimed at ensuring that regulations, policies, standards and managerial authorities are understood throughout the Office.

The financial statements of the Office of the Information Commissioner of Canada have been audited by the Auditor General of Canada, the independent auditor for the Government of Canada.

Robert Marleau
Information Commissioner of Canada

Suzanne Legault
Assistant Commissioner,
Policy, Communications and Operations

Ottawa, Canada
July 11, 2008

Auditor General of Canada
Vérificatrice générale du Canada

## AUDITOR'S REPORT

To the Speaker of the House of Commons and the Speaker of the Senate

I have audited the statement of financial position of the Office of the Information Commissioner of Canada as at March 31, 2008 and the statements of operations, equity of Canada and cash flow for the year then ended. These financial statements are the responsibility of the Office's management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Office as at March 31, 2008 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

Further, in my opinion, the transactions of the Office that have come to my notice during my audit of the financial statements have, in all significant respects, been in accordance with the *Financial Administration Act* and regulations and the *Access to Information Act*.

John Wiersema, FCA
Deputy Auditor General
for the Auditor General of Canada

Ottawa, Canada
July 11, 2008

**Office of the Information Commissioner of Canada**
**Statement of Financial Position**
as at March 31

| | 2008 | 2007 |
|---|---|---|
| **ASSETS** | | |
| **Financial assets** | | |
| Cash | $ 800 | $ 800 |
| Due from the Consolidated Revenue Fund | 626,412 | 257,726 |
| Accounts receivable (Note 4) | 159,890 | 311,016 |
| **Total financial assets** | 787,102 | 569,542 |
| **Non-financial assets** | | |
| Prepaid expenses | 14,669 | 11,130 |
| Tangible capital assets (Note 6) | 510,540 | 377,285 |
| **Total non-financial assets** | 525,209 | 388,415 |
| **Total assets** | $ 1,312,311 | $ 957,957 |
| **LIABILITIES** | | |
| Accounts payable and accrued liabilities (Note 5) | $ 601,270 | $ 358,089 |
| Accrued employee salaries | 232,716 | 198,811 |
| Vacation and compensatory leave | 189,232 | 225,068 |
| Employee severance benefits (Note 7) | 944,175 | 872,547 |
| **Total liabilities** | 1,967,393 | 1,654,515 |
| **EQUITY OF CANADA (Note 8)** | (655,082) | (696,558) |
| **Total liabilites and Equity of Canada** | $ 1,312,311 | $ 957,957 |

Contractual obligations (Note 9)
The accompanying notes form an integral part of these financial statements

Robert Marleau
Information Commissioner of Canada

Suzanne Legault
Assistant Commissioner,
Policy, Communications and Operations

**Office of the Information Commissioner of Canada**
**Statement of Operations**
for the year ended March 31

| | | 2008 | 2007 |
|---|---|---|---|
| **Expenses** | | | |
| | Salaries and employee benefits | $ 6,385,887 | $ 5,449,558 |
| | Professional and special services | 1,064,574 | 769,484 |
| | Accommodation | 630,844 | 430,643 |
| | Equipment | 234,933 | 321,675 |
| | Amortization | 111,294 | 136,883 |
| | Transportation and communications | 190,702 | 164,255 |
| | Information | 42,466 | 93,051 |
| | Utilities, materials and supplies | 57,701 | 65,274 |
| | Repairs and maintenance | 94,343 | 50,819 |
| | Rentals | 34,247 | 34,185 |
| | Loss on disposal of tangible capital asset | 5,044 | - |
| | Other | 831 | 10,962 |
| **Total operating expenses** | | 8,852,666 | 7,526,789 |
| **Revenues** | | | |
| | Miscellaneous revenues | 827 | - |
| **Net cost of operations** | | $ 8,851,839 | $ 7,526,789 |

The accompanying notes form an integral part of these financial statements

**Office of the Information Commissioner of Canada**
**Statement of Equity of Canada**
for the year ended March 31

| | 2008 | 2007 |
|---|---|---|
| **Equity of Canada, beginning of the year** | $ (696,558) | $ (618,479) |
| Net cost of operations | (8,851,839) | (7,526,789) |
| Services received without charge (Note 10) | 1,105,143 | 866,475 |
| Net cash provided by government | 7,419,486 | 6,680,214 |
| Change in Due from Consolidated Revenue Fund | 368,686 | (97,979) |
| **Equity of Canada, end of the year** | $ (655,082) | $ (696,558) |

The accompanying notes form an integral part of these financial statements

**Office of the Information Commissioner of Canada**
**Statement of Cash Flow**
for the year ended March 31

| | 2008 | 2007 |
|---|---|---|
| **Operating Activities** | | |
| Net cost of operations | $ 8,851,839 | $ 7,526,789 |
| Non-cash items: | | |
| Amortization of tangible capital assets | (111,294) | (136,883) |
| Loss on disposal of tangible capital assets | (5,044) | - |
| Services received without charge (Note 10) | (1,105,143) | (866,475) |
| Variations in Statement of Financial Position: | | |
| Increase (decrease) in accounts receivable | (151,126) | 287,670 |
| Increase in prepaid expenses | 3,539 | 3,367 |
| Increase in liabilities | (312,878) | (282,558) |
| Cash used by operating activities | 7,169,893 | 6,531,910 |
| **Capital Investment Activities** | | |
| Acquisition of tangible capital assets | 257,906 | 148,304 |
| Proceeds from disposal of tangible capital assets | (8,313) | - |
| Cash used by capital investment activities | 249,593 | 148,304 |
| **Financing Activities** | | |
| Net cash provided by Government | (7,419,486) | (6,680,214) |
| **Net Cash Used** | - | - |
| **Cash, beginning of year** | 800 | 800 |
| **Cash, end of year** | $ 800 | $ 800 |

The accompanying notes form an integral part of these financial statements

# Office of the Information Commissioner of Canada
## Notes to the Financial Statements
For the year ended March 31, 2008

### 1. Authority and objectives

The Office of the Information Commissioner of Canada, hereafter referred to as the Office, was created under the *Access to Information Act*, which came into force on July 1, 1983. The Commissioner is appointed by the Governor-in-Council following approval of his nomination by resolution of the Senate and the House of Commons. The Office of the Information Commissioner of Canada is designated, by Order-in-Council, as a department for purposes of the *Financial Administration Act*. As such, it is established under the authority of schedule I.1 of that Act and is funded through annual appropriations. The Commissioner is accountable for, and reports directly to Parliament on the results achieved.

The *Access to Information Act* is the legislative authority for the activities of the Information Commissioner and his Office. The objectives of the Office are:

- to deliver timely, thorough and fair investigations of complaints made by individuals denied information by the government;
- to encourage a culture of openness within the federal public service;
- to persuade federal government institutions to adopt information practices in keeping with the *Access to Information Act*;
- to bring appropriate issues of interpretation of the *Access to Information Act* before the Federal Court; and
- to ensure that Parliament is informed of the activities of the Commissioner's Office, the general state of health of the right of access and any matter dealt with in the access law requiring reform.

### 2. Significant accounting policies

a) Basis of presentation

The financial statements of the Office of the Information Commissioner of Canada have been prepared in accordance with Treasury Board accounting policies which are consistent with Canadian generally accepted accounting principles for the public sector, and year-end instructions issued by the Office of the Comptroller General.

b) Parliamentary appropriations

The Office of the Information Commissioner of Canada is financed by the Government of Canada through Parliamentary appropriations. Appropriations provided to the Office do not parallel financial reporting according to generally accepted accounting principles since appropriations are primarily based on cash flow requirements. Consequently, items recognized in the statement of operations and the statement of financial position are not necessarily the same as those provided through appropriations from Parliament. Note 3 provides a high-level reconciliation between the two bases of reporting.

c) Net cash provided by Government

The Office of the Information Commissioner of Canada operates within the Consolidated Revenue Fund (CRF), which is administered by the Receiver General for Canada. All cash receipts of the Office are deposited to the CRF and all cash disbursements made by the Office are paid from the CRF. The net cash provided by the government is the difference between all cash receipts and all cash disbursements including transactions between departments of the federal government.

d) Due from the Consolidated Revenue Fund

Due from the CRF represents the amount of cash that the Office is entitled to draw from the Consolidated Revenue Fund without further appropriations, in order to discharge its liabilities.

## Office of the Information Commissioner of Canada
## Notes to the Financial Statements
For the year ended March 31, 2008

e) Revenues

Revenues are accounted for in the period in which the underlying transaction or event occurred that gave rise to the revenues.

f) Expenses:

i) Vacation pay and compensatory leave are expensed as the benefits accrue to employees under their respective terms of employment.

ii) Services received without charge from other government departments are recorded as operating expenses at their estimated cost.

g) Accounts Receivables

Accounts receivable are stated at amounts expected to be ultimately realized. A provision is made for receivables where recovery is considered uncertain.

h) Tangible capital assets

All tangible capital assets and leasehold improvements providing multi-year benefits to the Office with an initial cost of $2,500 or more are recorded at their acquisition cost. Similar items with a cost less than $2,500 are included in the statement of operations. Amortization of tangible capital assets is done on a straight-line basis over the estimated useful life of the asset as follows:

| Asset Class | Amortization Period |
|---|---|
| Telecommunications equipment | 10 years |
| Informatics hardware | 3 years |
| Computer software | 3 years |
| Furniture and fixtures | 10 years |
| Motor vehicles | 10 years |
| Leasehold Improvements | Lesser of the remaining term of the lease or useful life of the improvement |

i) Employee future benefits

i) Pension benefits: Eligible employees participate in the Public Service Pension Plan, a multiemployer pension plan administered by the Government of Canada. The Office's contributions to the plan are charged to expenses in the year incurred and represent the total pension obligation of the Office to the Plan. Current legislation does not require the Office to make contributions for any actuarial deficiencies of the Plan.

ii) Severance benefits: Employees of the Office of the Information Commissioner of Canada are entitled to severance benefits under labour contracts or conditions of employment. The cost of these benefits is accrued as employees render the services necessary to earn them. The obligation relating to the benefits earned by employees is calculated using information derived from the results of the actuarially determined liability for employee severance benefits for the Government as a whole.

## Office of the Information Commissioner of Canada
## Notes to the Financial Statements
For the year ended March 31, 2008

j) Measurement uncertainty

The preparation of these financial statements in accordance with Treasury Board accounting policies, which are consistent with Canadian generally accepted accounting principles for the public sector, and year-end instructions issued by the Office of the Comptroller General, requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses reported in the financial statements. At the time of preparation of these statements, management believes the estimates and assumptions to be reasonable. The most significant items where estimates are used are in determining the expected useful life of tangible capital assets and in determining employee severance benefits. Actual results could significantly differ from those estimated. Management's estimates are reviewed periodically and, as adjustments become necessary, they are recorded in the financial statements in the year they become known.

### 3. Current year appropriations

a) Reconciliation of net cost of operations to current year appropriations used:

| | 2008 | 2007 |
|---|---|---|
| **Net cost of operations** | **$8,851,839** | **$7,526,789** |
| **Adjustments for items affecting net cost of operations but not affecting appropriations** | | |
| Amortization of tangible capital assets | (111,294) | (136,883) |
| Services received without charge from other government departments | (1,105,143) | (866,475) |
| (Loss) gain on disposal of tangible capital assets | (5,044) | - |
| Change in vacation and compensatory leave | 35,836 | (48,480) |
| Change in employee severance benefits | (71,628) | (39,164) |
| Other | - | 15,720 |
| **Sub-Total** | **7,594,566** | **6,451,507** |
| **Adjustments for items not affecting net cost of operations but affecting appropriations** | | |
| Acquisition of tangible capital assets | 257,906 | 148,304 |
| Change in prepaid expenses | 3,539 | 3,367 |
| Other | (1) | 7,763 |
| **Current year appropriations used** | **$7,856,010** | **$6,610,941** |

## Office of the Information Commissioner of Canada
## Notes to the Financial Statements
For the year ended March 31, 2008

b) Appropriations provided and used:

| | 2008 | 2007 |
|---|---|---|
| **Parliamentary appropriations voted:** | | |
| Vote 40 - Operating expenditures | $7,246,451 | $7,276,571 |
| Statutory amounts: | | |
| Contributions to employee benefit plans | 844,409 | 699,503 |
| | 8,090,860 | 7,976,074 |
| Less: Lapsed appropriations - operating | (234,850) | (1,365,133) |
| **Current year appropriations used** | **$7,856,010** | **$6,610,941** |

c) Reconciliation of net cash provided by Government to current year appropriations used:

| | 2008 | 2007 |
|---|---|---|
| **Net cash provided by Government** | $7,419,486 | $6,680,214 |
| Variation in cash and accounts receivable | 151,126 | (287,670) |
| Variation in accounts payable, accrued liabilities and accrued employee salaries | 277,086 | 194,914 |
| Proceeds form disposal of tangible capital assets | 8,313 | - |
| Other adjustments | (1) | 23,483 |
| **Current year appropriations used** | **$7,856,010** | **$6,610,941** |

4. **Accounts Receivable**

| Description | 2008 | 2007 |
|---|---|---|
| Accounts Receivable – External parties | $ 4,483 | $ 3,691 |
| Accounts Receivable – Other government departments | 155,407 | 307,325 |
| **Total Accounts receivable** | **$159,890** | **$311,016** |

5. **Accounts Payable and Accrued Liabilities**

| Description | 2008 | 2007 |
|---|---|---|
| Accounts Payable – External parties | $505,929 | $280,813 |
| Accounts Payable – Other government departments | 95,341 | 77,276 |
| **Total Accounts payable and accrued liabilities** | **$601,270** | **$358,089** |

## Office of the Information Commissioner of Canada
## Notes to the Financial Statements
For the year ended March 31, 2008

### 6. Tangible capital assets

| COST | March 31, 2007 | Acquisitions | Disposals & write offs | March 31, 2008 |
|---|---|---|---|---|
| Telecommunications equipment | $ 271,882 | $ 13,025 | $ - | $ 284,907 |
| Informatics hardware | 284,647 | 8,604 | - | 293,251 |
| Computer software | 545,656 | 9,804 | - | 555,460 |
| Furniture and fixtures | 271,354 | 226,473 | - | 497,827 |
| Motor vehicles | 23,926 | - | (23,926) | - |
| Leasehold improvements | 313,922 | - | - | 313,922 |
| | $ 1,711,387 | $ 257,906 | $ (23,926) | $ 1,945,367 |

| ACCUMULATED AMORTIZATION | March 31, 2007 | Amortization | Disposals & write offs | March 31, 2008 |
|---|---|---|---|---|
| Telecommunications equipment | $ 165,091 | $ 27,129 | $ - | $ 192,220 |
| Informatics hardware | 162,794 | 50 061 | - | 212,855 |
| Computer software | 545,656 | - | - | 545,656 |
| Furniture and fixtures | 153,850 | 27 512 | - | 181,362 |
| Motor vehicles | 9,572 | 997 | (10,569) | - |
| Leasehold improvements | 297,139 | 5,595 | - | 302,734 |
| | $ 1,334,102 | $ 111,294 | $ (10,569) | $ 1,434,827 |
| **Net Book Value** | **$ 377,285** | | | **$ 510,540** |

Amortization expense for the year ended March 31, 2008 is $111,294 (2007 - $136,883).

### 7. Employee benefits

a) Pension benefits: The Office of the Information Commissioner of Canada and all eligible employees participate in the Public Service Pension Plan, which is sponsored and administered by the Government of Canada. Pension benefits accrue up to a maximum period of 35 years at a rate of 2 percent per year of pensionable service, times the average of the best 5 consecutive years of earnings. The benefits are integrated with Canada/Quebec Pension Plans benefits and they are indexed to inflation.

Both the employees and the Office contribute to the cost of the Plan. The 2007-08 expense amounts to $615,574 ($515,534 in 2006-07), which represents approximately 2.13 times the contributions by employees.

The Office's responsibility with regard to the Plan is limited to its contributions. Actuarial surpluses or deficiencies are recognized in the financial statements of the Government of Canada, as the Plan's sponsor.

## Office of the Information Commissioner of Canada
## Notes to the Financial Statements
For the year ended March 31, 2008

b) Severance benefits: The Office of the Information Commissioner of Canada provides severance benefits to its employees based on eligibility, years of service and final salary. The benefit plan is not pre-funded and thus has no assets, resulting in a plan deficit equal to the accrued benefit obligation. Benefits will be paid from future appropriations. Information about the severance benefits, measured as at March 31, is as follows:

| | 2008 | 2007 |
|---|---|---|
| Accrued benefit obligation, beginning of the year | $872,547 | $833,383 |
| Expense for the year | 230,846 | 116,525 |
| Benefits paid during the year | (159,218) | (77,361) |
| **Accrued benefit obligation, end of the year** | **$944,175** | **$872,547** |

**8. Equity of Canada**

The equity of Canada represents liabilities incurred by the Office, net of tangible capital assets, that have not yet been funded through appropriations. Significant components of this amount are employee severance benefits and vacation pay liabilities. These amounts are expected to be funded by appropriations in future years as they are paid.

**9. Contractual obligations**

The nature of the Office's activities can result in some large multi-year contracts and obligations whereby the Office will be obligated to make future payments when the services/goods are received. Significant contractual obligations that can be reasonably estimated are summarized as follows:

| Fiscal Year | Total |
|---|---|
| 2008-2009 | $18,801 |
| 2009-2010 | 13,250 |
| 2010-2011 and thereafter | 4,844 |
| | **$36,895** |

**10. Services received without charge**

During the year, the Office received without charge from other departments, accommodation, employer's contribution to the health and dental insurance plans, audit services and payroll and cheque issuance services. These services without charge have been recognized in the Office's statement of operations as follows:

| Description | 2008 | 2007 |
|---|---|---|
| Public Works and Government Services Canada – accommodation | $ 630,644 | $430,643 |
| Treasury Board Secretariat – employer's share of insurance premiums | 360,185 | 346,400 |
| Office of the Auditor General of Canada – audit services | 112,000 | 87,000 |
| Public Works and Government Services Canada – payroll services | 2,314 | 2,432 |
| **Total services received without charge** | **$1,105,143** | **$866,475** |

## Office of the Information Commissioner of Canada
## Notes to the Financial Statements
For the year ended March 31, 2008

**11. Related party transactions**

The Office of the Information Commissioner of Canada is related as a result of common ownership to all Government of Canada departments, agencies and Crown corporations. The Office enters into transactions with these entities in the normal course of business and on normal trade terms. During the year, the Office expensed $2,433,325 ($1,774,714 in 2006-07) in the normal course of business with other government departments, agencies and Crown corporations. These expenses include services received without charge of $1,105,143 as described in Note 10.

## 3.3 Sources of Additional Information

**Legislation Administered by the Information Commissioner**

*Access to Information Act* R.S.C. 1985, ch. A-1, amended 1997, c.23, s. 21.

**Statutory Annual Reports and Other Publications**

Statutory reports, publications and other information are available from the Office of the Information Commissioner of Canada, Ottawa, Canada K1A 1H3; tel.: (613) 995-2410 and on the OIC's Web site at www.infocom.gc.ca.

**Contact for Further Information**

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## Section IV: Other Items of Interest

This Section describes the management achievements and reports on the administration of the Act in 2007-2008, both of which have contributed directly to the achievement of one of the four priorities that the Office had set for this fiscal year. More detail about the following priority is reported in Section 1.6 of this Report.

| Priorities | Type |
|---|---|
| Establish and administer a capacity to respond to requests under both the *Access to Information Act* and the *Privacy Act*, and comply with administrative provisions of those statutes. | New |

### 4.1 Management Achievements

Management activities serve to effectively support the delivery of Program Activity 1. They include: management control and accountability (covering finance, internal audit and evaluation), human resources, information management and technology, communications, and administrative services. Resources associated with internal services have been incorporated to the Program Activity they support. This section presents the management achievements for 2007-2008.

**Management Control and Accountability**

The Office sought and received additional funds to comply with the requirements of the *Access to Information Act* as amended by the *Federal Accountability Act*, as well as to establish and maintain an internal audit function. The Office also received funding to undertake a review of operations and funding levels (A-base review) to determine whether current levels may adversely impact the ability of the Office to deliver on the legislative mandate and put the integrity of the program at risk. The A-base review will be undertaken in 2008-2009.

**Human Resources**

As a result of the restructuring of the Office in 2007-2008, a new Human Resources team consisting of additional resources was created. The HR team was responsible for the development of a new sub-delegation authorities instrument, a new Integrated Human Resources Plan aligned with the organizational business planning process and the continued work on the development of the Office staffing monitoring framework.

Other activities and initiatives undertaken this year by the HR team were the on-going revision of all human resources policies as well as the introduction of new policies such as a Formal Recognition Award Program, Performance and Learning Agreements for all employees. In addition, two new human resources committees were established: a Labour-Management Consultation Committee and a Health and Safety Committee.

**Information Management / Information Technology (IM/IT)**

In 2007-2008, the Office built a computer network infrastructure including construction of a new local area network (LAN) room. The construction involved building a larger LAN room to accommodate more server equipments. As part of this improvement, we also created an internal computer help desk position.

**Internal Audit**

As indicated above, the Office obtained funds to establish an internal audit function that complies with the Treasury Board Secretariat's policy and directives while preserving the Office's independence from government. The function will be established, including the appointment of a chief audit executive, the development of a risk-based internal audit plan, and the establishment of an independent audit committee, by April 1st, 2009.

**Administration**

During 2007-2008, the Office partly resolved the accommodation problem by obtaining additional office space. A move took place at the beginning of 2008-2009.

## 4.2 Reporting on the administration of the *Access to Information Act*

The Office became subject to the *Access to Information Act* and the *Privacy Act* on April 1, 2007. In 2007-2008, the Office set up a secretariat – essentially an access to information and privacy office – in the Office's Information Management Division to administer both Acts. The work of the secretariat involves responding to requests under both Acts, as well as to requests from other institutions considering releasing information generated by the Office (called consultations).

In 2007-2008, we received 93 access requests and 3 privacy requests. We participated in 21 consultations.

The Office secured funding for permanent staffing of the secretariat and to purchase software to support the processing of access and privacy requests. The software will also help the Office to comply with the reporting requirements set out in Treasury Board's policies on access to information and privacy protection, as well as produce the annual reports on administration of the Acts that we will present to Parliament each year.

**Complaints**

The amendments to the *Access to Information Act* stemming from the *Federal Accountability Act* that made the Office subject to the Act did not set out how access to information complaints against the Office would be handled. To ensure that there are proper safeguards in place to prevent the conflict of interest that would arise if we had to investigate ourselves, the Commissioner appointed an ad hoc Commissioner to handle these investigations. The Former Supreme Court of Canada Justice, Honourable Peter de C. Cory agreed to take up this new office establishing guiding principles for it and how it would operate.

In 2007-2008, the Office was notified of 10 access to information complaints. Seven complaints were completed during the year: 4 were not substantiated; 2 were cancelled; 1 was resolved.